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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91217606
Party	Defendant EDS Manufacturing, LLC
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Submission	Answer
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PREMIO FOODS, INC.,)	Opposition No. 91217606
)	
Opposer,)	Serial No. 85/558,771
)	
v.)	Mark:
)	
EDS MANUFACTURING, LLC,)	
)	
Applicant.)	



**APPLICANT EDS MANUFACTURING, LLC'S
ANSWER AND AFFIRMATIVE DEFENSES
TO OPPOSER PREMIO FOODS, INC.'S NOTICE OF OPPOSITION**

Applicant, EDS Manufacturing, LLC (hereafter “Applicant” or “EDS”), by and through its attorneys of record, and in accordance with Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) and the Federal Rules of Civil Procedure answers Opposer, Premio Foods, Inc.'s (hereafter “Opposer” or Premio) Notice of Opposition as follows:

The grounds stated by Opposer for this opposition under Section 2 of the Lanham Act and Applicant's respective Answers are as follows:

1. Since long prior to May 1, 2007, Applicant's alleged date of first use and first use in commerce of the goods in Int. Class 30, as well as long prior to the constructive date of first use of the goods in Int. Cl. 29 (based on the application's filing date of March 2, 2012), Opposer has continuously used in commerce the mark PREMIO in connection with the sale of sausage products. As a result of Opposer's use, promotion, and advertising of the PREMIO mark, it has become well known in many parts of the United States, including the state of Michigan where Applicant does business using the mark herein opposed.

APPLICANT'S ANSWER: Applicant is without sufficient information upon which to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Notice of Opposition and therefore denies same.

2. Opposer is the present owner of Registration Nos. 3,443,606 for the PREMIO mark and that registration is valid and in effect. A certified status and title copy and title of that registration will be provided at a later date in this proceeding.

APPLICANT'S ANSWER: Applicant is without sufficient information upon which to form a belief as to the truth or falsity of the allegations contained in Paragraph 2 of the Notice of Opposition and therefore denies same.

3. Applicant's mark, P PREMO BRAND and Design, is in all respects so confusingly similar in sight, sound and commercial impression to Opposer's registered PREMIO mark as to be likely, when applied to the products of Applicant, to cause confusion, mistake or deception, leading purchasers of Applicant's goods to the mistaken belief that the goods of Applicant emanate from Opposer, or are disseminated under Opposer's approval, sponsorship, or control, all to the harm and damage of Opposer in violation of Section 2(d) of the Lanham Act.

APPLICANT'S ANSWER: Applicant denies the allegation of Paragraph 3 of the Notice of Opposition.

4. The goods of the Applicant, as described in its application in Int. Classes 29 and 30, are closely related to the sausage products offered and sold by Opposer under its aforesaid registrations and are likely to be purchased and used by the same class of consumers. As a result of the similarity between the marks and the relationship between the goods of the parties, purchasers of Applicant's products are apt to believe that the P PREMO BRAND branded products are somehow connected with, or endorsed or sponsored by, Opposer, all to the harm and detriment of Opposer.

APPLICANT'S ANSWER: Applicant denies the allegation of Paragraph 4 of the Notice of Opposition.

5. Opposer, over a period of fourteen years, has expended enormous amounts of time, effort and expense in promoting the sale of its goods and encouraging the public and trade to recognize its products under the PREMIO mark. The registration of essentially the identical mark, P PREMO BRAND, for food products would enable the Applicant to reap the benefits of the goodwill and reputation attached to Opposer's mark as a result of the confusion that is likely to occur, all to Opposer's irreparable harm and damage.

APPLICANT'S ANSWER: With respect to the first allegation in Paragraph 5 of the Notice of opposition, Applicant is without sufficient information upon which to form a belief as to the truth or falsity of the allegations contained in Paragraph 5 of the Notice of Opposition and therefore denies same.

With respect to the second allegation in Paragraph 5 of the Notice of Opposition, Applicant denies the allegation.

6. Because of the similarities between Applicant's P PREMO BRAND mark and Opposer's PREMIO mark in appearance, sound and commercial impression, and in light of the related nature of the goods sold under the marks, Opposer alleges that Applicant's mark consists of or comprises matter that is likely to suggest a trade connection between them, all in violation of Section 2(a) of the Lanham Act.

APPLICANT'S ANSWER: Applicant denies the allegation of Paragraph 6 of the Notice of Opposition.

Affirmative Defenses

1. Opposer's Notice of Opposition fails to state a claim upon which relief may be granted.

2. Opposer cannot demonstrate any likelihood that the public will be confused or misled as to the source of Applicant's goods, or that Applicant's goods are associated with or endorsed by Opposer.

3. Opposer cannot demonstrate any false suggestion of connection.

Wherefore, the Applicant respectfully submits that the Opposition be dismissed and that this Opposition be sustained in favor of the Applicant and the Applicant's mark "P PREMO BRAND," Application no. 85/558,771 be permitted to proceed to registration.

Respectfully submitted,

by /s/Richard W. Hoffmann
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Attorneys for Applicant EDS Manufacturing LLC

Date: September 8, 2014

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September 2014, the foregoing APPLICANT EDS MANUFACTURING, LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER PREMIO FOODS, INC.'S NOTICE OF OPPOSITION; and CERTIFICATE OF SERVICE were served on the following:

By: First Class Mail

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